

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 2865 – SB 3520

April 26, 2012

**SUMMARY OF AMENDMENT (017478):** Deletes all language after the enacting clause. Defines “eligible petitioner” as a person convicted of a violation of simple possession or casual exchange of a controlled substance. Effective July 1, 2012, authorizes an eligible petitioner to file for expungement of his or her public record involving a criminal offense, if at the time of filing, the person has never been convicted of any criminal offense, including federal offenses and offenses committed in other states other than the offense committed for which the petition for expungement is filed; at least five years have elapsed since the completion of the sentence imposed for the offense; and the person has fulfilled all requirements of the sentence imposed by the court, including payment of all fines, restitution, court costs and other assessments; completion of any term of imprisonment or probation; meeting all conditions of supervised or unsupervised release; and if so required by the conditions of the sentence imposed, remaining free from dependency on or abuse of alcohol or a controlled substance or other prohibited substance for a period of not less than one year. Requires a person seeking expungement to petition the court in which the petitioner was convicted of the nonviolent offense for which the petition is filed. Upon filing, requires the clerk to serve it on the district attorney general (DAG) for that judicial district. Authorizes the DAG to submit recommendations to the court within 60 days after service of the petition. If the court denies the petition, the petitioner may not file another such petition until at least two years from the date of denial.

By September 1, 2012, requires the District Attorneys General Conference (DAGC) to create a simple form to allow a lay person to petition the court for expungement. Requires the DAG to prepare the petition and proposed order and provide it to the petitioner to be filed with the appropriate court clerk. Requires the district public defender of each judicial district to conduct at least one annual educational program to provide information and assistance with the general expungement process and the expungement process established by this legislation. Requires the District Public Defenders Conference to maintain a video of the educational program on the Conference’s website, if available.

Requires the petitioner to pay the court clerk a fee of \$350 upon filing of the petition. Of each fee, the Tennessee Bureau of Investigation (TBI) will receive \$50 to defray the costs incurred from the additional expungement petitions filed and granted; and the court clerk shall retain \$10 of each fee and remit the remaining \$290 to the trustee to be allocated in the following manner: five percent to the newly created Public Defenders Expungement Fund (PDEF); 40 percent to the newly created District Attorneys Expungement Fund (DAEF) for FY12-13 and 45 percent for each subsequent fiscal year; and 55 percent to the state general fund for FY12-13 and 50 percent for each subsequent fiscal year. Requires the monies in the DAEF to be used to defray the expense incurred for the required record search and preparation of the petition and proposed order of expungement. Any remaining monies in the DAEF may be used for law enforcement

purposes, including but not limited to, the hiring of expert witnesses, training, matching federal grants directly related to prosecutorial duties, purchasing equipment and supplies, travel, and salaries and salary supplements for DAGC support staff. Monies in the DAEF will not revert to the general fund but will be carried forward. Subjects all funds in the DAEF to an annual audit by the Comptroller of the Treasury. Requires the monies in the PDEF to be used to defray the expense incurred by conducting the annual educational activities required by this legislation. Subject to annual appropriation, any remaining monies in the DPEF may be used in the furtherance of the services and programs provided by public defenders for each judicial district. Monies in the PDEF will not revert to the general fund but will be carried forward.

Beginning July 1, 2013, requires the TBI to review the number of expungement petitions, the cost of processing each motion, and the amount of money paid in expungement fees to determine if the amount allotted to the Bureau is adequate, and if some portion of such funds could be used for other criminal justice purposes such as the Criminal Injuries Compensation Fund or drug court funding. Requires the Bureau to report its findings to the General Assembly in January 2014.

Specifies an order of expungement granted pursuant to this legislation has the legal effect of restoring the petitioner to the same status occupied before the arrest, indictment, information, trial and conviction. Expungement under this legislation means, in contemplation of law, the conviction for the expunged offense never occurred and the person shall not suffer any adverse affects or direct disabilities by virtue of the criminal offense that was expunged. Authorizes a person, whose petition is granted pursuant to this legislation and who is otherwise eligible under state or federal law to possess a firearm, to be eligible to purchase a firearm pursuant to Tenn. Code Ann. § 39-16-1316 and apply for and be granted a handgun carry permit pursuant to Tenn. Code Ann. § 39-17-1351. Specifies that records expunged pursuant to the proposed legislation are to be confidential and can only be used to enhance a sentence if the petitioner is subsequently charged and convicted of another crime.

#### **CORRECTED FISCAL IMPACT OF ORIGINAL BILL:**

Increase State Expenditures - \$4,900/One-Time  
\$175,700/Recurring

#### **FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:**

**Increase State Revenue – Exceeds \$234,000/TBI**  
**Exceeds \$68,000/Public Defenders Expungement Fund**  
**Exceeds \$542,000/FY12-13/District Attorneys Expungement Fund**  
**Exceeds \$609,000/FY13-14 and Subsequent Years/District Attorneys**  
**Expungement Fund**  
**Exceeds \$745,000/FY12-13/General Fund**  
**Exceeds \$677,000/FY13-14 and Subsequent Years/General Fund**

**Increase State Expenditures - \$1,000/FY12-13/TBI  
\$35,100/Recurring/TBI**

**Increase Local Revenue – Exceeds \$46,700  
Increase Local Expenditures – Not Significant**

Assumptions applied to amendment:

- According to information provided by the Administrative Office of the Courts (AOC), in the state courts, there has been an average of 2,335 in each the last five years for simple possession convictions.
- TBI assumes these 2,335 counts represent 25 percent of the total, excluding general sessions courts. Total counts, including general sessions courts, will result in 9,340 (2,335 x 4) additional expungement requests each year.
- Approximately 50 percent or 4,670 of the total offenders who will be eligible will pay the \$350 to have his or her record expunged resulting in an increase in revenue for state and local government.
- The court clerk will retain \$10 of each fee resulting in an increase in local revenue of at least \$46,700 (\$10 x 4,670 expungement requests). Any increase in workloads for the court clerks to collect the additional fee can be accommodated within existing resources.
- A total increase in state revenue of at least \$1,587,800 (\$340 x 4,670 expungement requests).
- Of the total revenue collected, TBI will receive at least \$233,500 (\$50 x 4,670 expungement requests). The remaining revenue collected, \$1,354,300 (\$1,587,800 - \$233,500), five percent or \$67,715 (\$1,354,300 x 5.0%) will be deposited in the Public Defenders Expungement Fund; 40 percent or \$541,720 (\$1,354,300 x 40%) in FY12-13 and 45 percent or \$609,435 (\$1,354,300 x 45%) in FY13-14 and subsequent years will be deposited in the District Attorneys Expungement Fund; and 55 percent or \$744,865 (\$1,354,300 x 55%) in FY12-13 and 50 percent or \$677,150 (\$1,354,300 x 50%) in FY13-14 and subsequent years will be deposited in the state general fund.
- The TBI will require one additional data processing operator position to handle the additional expungement requests. According to TBI, a data processing operator can process 50 requests per day or 11,000 per year.
- An increase in state expenditures of \$35,135 reflects the salary (\$23,900), benefits (\$9,475), and other related supplies (\$1,760) for five additional positions.
- A one-time increase in expenditures of \$980 reflects office supplies for the position.
- According to the DAGC, any increase in caseloads as a result of the proposed legislation can be handled within its current staffing. Any increase in costs for the DAGC to create the required form or to prepare the petition and order of expungement will be offset by the increase in revenue collected as a result of this legislation.
- Any increase in expenditures for the District Public Defenders Conference to provide the required annual training will be offset by the increase in revenue collected as a result of this legislation.
- The required annual audit of the funds in the District Attorneys Expungement Fund can be accommodated within the existing resources of the Office of the Comptroller of the Treasury.

- Any impact to the Department of Safety to handle the additional requests for handgun carry permits can be accommodated within existing resources without an increased appropriation or reduced reversion.

**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "Lucian D. Geise". The signature is fluid and cursive, with the first name "Lucian" written in a larger, more prominent script than the last name "Geise".

Lucian D. Geise, Executive Director

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